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The present Preliminary Amendment is being submitted together with a Request for Continued Examination of the above-identified application.

By the present Preliminary Amendment claim 1 has been changed to recite that the waist-opening and leg-opening each have a circumference and that the first elastic members extend substantially along the entire circumference of the waist-opening exclusive of bonding zones.

Likewise claims 2 and 3 have been changed to recite that the second and third elastic members extend substantially along the entire circumference of the waist-opening exclusive of bonding zones.

Support for the changes to claims 1-3 can be found in the drawings. This change to the claims is believed to more clearly describe applicants' invention and is commensurate with the description that the ends of the elastic members are located "immediately inside [directionally]" the bonding zones.

Moreover, these changes are believed to more clearly distinguish applicants' invention over the prior art for the reasons set forth below.

Entry of the changes to the claims is respectfully requested.

In the Official Action of July 17, 2002 the Examiner rejected claims 1-4 under 35 U.S.C. §102(b) as being unpatentable over U.S. Patent No. 5,817,087 to Takabayashi et al. in view of U.S. Patent No. 6,113,717 to Vogt et al.

The Examiner relied upon Takabayashi et al. as disclosing:

...a shorts type disposable diaper (FIG. 1, 1), comprising two liquid permeable waist sheets, back and top (10 and 30 combined), with two elastic members (11 and 21)

located at the waist and along the opening for legs, respectively, substantially as claimed with the exception of placing a third elastic region and specifying the strength of bonding zones to be in a range of 4 to about 40 N with respect to a 25 mm longitudinal dimension of said bonding zones and having elastic members end before they enter their respective bonding zones.

The Examiner states that: "Vogt shows the latter feature to be old in the disposable undergarment art (FIG. 1, 58)."

In combining Takabayashi et al. and Vogt et al., the Examiner takes the position that:

It still would have been obvious....to modify the disposable undergarment of Takabayashi in view of Vogt, by adding a third elastic member below and in parallel the first one (11) in order to improve the efficiency of the product.

The Examiner concedes that Takabayashi et al. fails to teach "having elastic members end before they enter their respective bonding zones."

Takabayashi et al. teaches a "shorts type" diaper having elastic members 11, 31 and 21 that extend into the bonding zones 6a and 6b.

Vogt et al. teach a diaper that includes waist elastic members 58 that extend between side panels 48 which side panels as taught at column 10, lines 56-58 are "desirably" "elastic or stretchable to provide improved fit about the wearer."

It thus can be appreciated that Vogt et al. only requires the elastic members 58 to extend between the side panels 48, because the side panels 48 are themselves elastic. That is, the combination of the elastic members 58 and elastic side panels 48 provide a stretchability that that encircles the waist opening of the diaper in Vogt et al. similar to the manner in which the elastic members of Takabayashi et al. extend throughout the entire circumference of the waist opening including into and through the bonding zones.

Moreover, it can be readily understood from Vogt et al. that the elastic members 58 as shown in Fig. 1 are not taught to be effective without being used in combination of the elastic side panels 48 (which by the way are elastic at the side seams 74 where they are bonded together).

As held by the court of appeals in *In re Wesslau*:

It is impermissible within the framework of Section 103 to pick and choose from any one reference only so much of it as will support a given position to the exclusion of other parts necessary to the full appreciation of what such reference fairly suggests to one of ordinary skill in the art. *In re Wesslau*, 147 USPQ 391 (CCPA 1965)

In applying the holding in *In re Wesslau* to the present situation, it would be improper under 35 U.S.C. §103 to isolate the elastic members 58 of Vogt et al. from the elastic side panels 48 and incorporate them into Takabayashi et al.

Note both Takabayashi et al. and Vogt et al. teach side seams or bonding zones in which the elastic members of Takabayashi et al. and elastic side panels of Vogt et al. extend.

Accordingly, neither of these references alone or in combination renders applicants' claimed invention obvious.

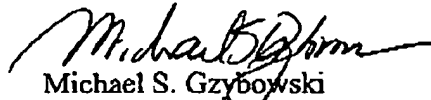
Entry of the present Preliminary Amendment and a early examination of the application are respectively requested.

If upon consideration of the above, the Examiner should feel that there remain outstanding issues in the present application that could be resolved, the Examiner is invited to contact applicants' patent counsel at the telephone number given below to discuss such issues.

To the extent necessary, a petition for an extension of time under 37 CFR §1.136 is hereby made. Please charge the fees due in connection with the filing of this paper, including extension of

time fees, to Deposit Account No. 12-2136 and please credit any excess fees to such deposit account.

Respectfully submitted,


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Marked-Up Copy of the Claims
As Amended on March 10, 2003

1. (Three Times Amended) A disposable pull-on undergarment comprising:

front and rear waist regions opposed to each other;

a crotch region extending between said front and rear waist regions;

bonding zones connecting said front and rear waist regions to one another, and extending along transversely opposite side edge portions of said front and rear waist regions so as to define a waist-opening having a circumference and a pair of [leg-openings;] leg-openings each having a circumference;

first elastic members bonded under tension to a peripheral edge of the waist-opening and being stretchable circumferentially of said first and second waist regions; and

second elastic members bonded under tension to peripheral edges of the leg-openings and being stretchable circumferentially of said leg-openings,

said first elastic members extending substantially along the entire circumference of the waist-opening exclusive of bonding zones. [having pairs of first opposed terminal ends and intermediate portions extending between said first opposite terminal ends, said first opposite terminal ends being positioned and fixed at first zones defined immediately inside said bonding zones in a circumferential direction of said waist-opening so that the opposite terminal ends of the first elastic members are not bonded to the front and rear waist regions in the bonding zones.]

2. (Three Times Amended) The disposable pull-on undergarment according to Claim 1, wherein said second elastic members extend substantially along the entire circumference of the leg-openings exclusive of bonding zones. [each have pairs of second opposite terminal ends and second intermediate portions extending between said second opposite terminal ends, and said second opposite terminal ends being positioned and fixed at second zones defined immediately inside said bonding zones in respective circumferential directions of said leg-opening so that the opposite terminal ends of the second elastic members are not bonded to the front and rear waist regions in the bonding zones.]

3. (Three Times Amended) The disposable pull-on undergarment according to Claim 1, further comprising at least one third elastic member laying below said first elastic members and being stretchable in said circumferential direction of said waist-opening, said at least one third elastic member being attached under tension to at least one of said front and rear waist regions between the peripheral edge of said waist-opening and said peripheral edges of said leg-openings, each of said at least one third elastic members extending substantially along the entire circumference of the waist-opening exclusive of bonding zones. [having a pair of third opposite terminal ends and a third intermediate portion extending between said third opposite terminal ends, said third opposite terminal ends being positioned and fixed at third zones defined immediately inside said bonding zones in the circumferential direction of said waist-opening so that the opposite terminal ends of the at least one third elastic member are not bonded to the front and rear waist regions in the bonding zones.]